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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

JUL 17 2003

FILE: [REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. §1255a

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Attached is the decision rendered on your appeal. The file has been returned to the Service Center that processed your case. If your appeal was sustained, or if your case was remanded for further action, the Service Center will contact you. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann
for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: This termination of temporary resident status by the Director, Western Service Center, is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because the applicant failed to provide requested information concerning his criminal record.

On appeal, the applicant submitted additional documentation.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 245a.2(c)(1).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The record reveals that, at his legalization interview, the applicant stated that he had been arrested three times for drunk driving. On August 1, 1991, the director requested that the applicant submit a DL414 or H-6 printout from the California Department of Motor Vehicles (DMV) showing his complete driving history. The applicant was also directed to provide the final court dispositions regarding the three admitted charges, or other information which indicates that no convictions have occurred. The applicant failed to respond to the request and the director terminated his temporary resident status.

On appeal, the applicant provided court documents for a November 23, 1987 conviction. It is unclear what charge the applicant was convicted of. He was, however, sentenced to 190 days in the County jail; fined \$1312; ordered to serve 336 hours of unpaid community services; and, instructed to complete an alcohol(drug) education program. The applicant did not submit any documentation concerning any other charges or convictions, and also failed to provide the DL414 or H-6 printouts requested by the director.

The applicant must agree to fully cooperate in the verification process. Failure to assist the Bureau in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

It is concluded the applicant has failed to provide documents necessary for the adjudication of the application.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.